

Respondent argues the claimant's current condition is the natural and probable consequence of a right knee injury she suffered in 2005. Respondent requests the Board to affirm the ALJ's Order denying the claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant testified she suffered an accidental injury on January 5, 2005¹, with Larned State Hospital. Respondent provided medical treatment from Drs. Snodgrass and Hildebrand. Dr. Hildebrand performed surgery on claimant's right knee and following the surgery claimant received cortisone injections. Claimant was released to return to full-duty work without restrictions in 2006. A permanent impairment rating for claimant's right knee was never assigned.

Claimant's job duties as an aide involved escorting patients, assisting them with feeding, bathing, dressing, getting in and out of bed, etc. As of June 2006, claimant became employed as a registered nurse with respondent.

Claimant testified how her job duties changed through October 28, 2009. She testified:

Q. Explain to us how the nature and character of the physical work you performed changed subsequent to the return to work following Dr. Hildebrand's surgery and leading up until the end of your employment in October of last year.

A. As a registered nurse you're the supervisor, basically, on that unit, so you would be required to, if you had a patient altercation, you would be out there assisting, making sure that staff was doing things correctly. You would try to, if it was an aggressive patient, you would use your skills to try to, you know, deescalate these patients, if you could. It required you to be hands-on on any kind of out of the ordinary incident. You know, ordinary, any kind of fall, any kind of fight, any kind of aggression. You know, anything that was out of the ordinary, it would require the nurse to be there and make sure that the patient was safe.

Q. Did those types of activities require physical action on your part, as well as supervisory skills.

A. Yes.²

Claimant testified that as she continued to work after her right knee surgery the knee condition got worse. She also indicated that her left knee began to hurt due to being on her feet a lot at work. And then her lower back began to hurt as well. Claimant's work schedule required her to work two 14-hour shifts and a 12-hour shift. She testified that it

¹ Docket No. 1,048,078

² P.H. Trans. at 20-21.

varied but some days she was on her feet two-thirds of her shift and other days one-third. But due to understaffing claimant testified that right before she quit work for respondent she was constantly on her feet.

Claimant's last day employed by respondent was October 28, 2009. On that day she had worked her shift but staffing problems led to her supervisor requesting that she take a few hours off and then return. Claimant testified that due to ongoing pain she simply felt she could not continue working. She never returned to work and was terminated. She then filed the instant claim.

Claimant named several co-workers that she had told about her ongoing pain complaints with work. Claimant testified that at the end of a shift her right knee would swell and toward the end of her employment her left knee became as painful as the right. She also complained of back pain. Claimant tried to return to Dr. Hildebrand in the summer of 2009 to get treatment for her legs and back but she could not get that approved as the self-insured respondent attributed her complaints to the 2005 injury. Lynn Streit, her supervisor, agreed she had made complaints about her right knee but attributed that condition to her 2005 accidental injury. The other named co-workers did not testify. Ms. Streit also stated claimant had told her she had fallen at home and injured her right knee a year or two in the past.

Dr. C. Reiff Brown examined and evaluated claimant on December 11, 2009. Dr. Brown's history included a notation that claimant's back pain and right knee pain were constant especially at her work which required her being on her feet all the time with bending and lifting of patients and combative situations with patients. Dr. Brown further noted the long shifts worked have increased the severity of her pain. Dr. Brown opined in pertinent part:

In my opinion this lady has suffered chondromalacia of the patella and aggravation of preexisting degenerative arthrosis in the knees bilaterally. She has responded poorly to an arthroscopic debridement of the right knee and continues to be quite symptomatic with pain. She also has aggravated probable preexisting degenerative changes in the low back with her antalgic gait. In my opinion the knee and low back symptoms are the result of the work activity that occurred each and every working day through October 28, 2009.³

A claimant in a workers compensation proceeding has the burden of proof to establish by a preponderance of the credible evidence the right to an award of compensation and to prove the various conditions on which his or her right depends.⁴ A claimant must establish that her personal injury was caused by an "accident arising out of

³ P.H. Trans., Cl. Ex. 1 at 3.

⁴ K.S.A. 2009 Supp. 44-501(a); *Perez v. IBP, Inc.*, 16 Kan. App. 2d 277, 826 P.2d 520 (1991).

and in the course of employment.”⁵ The phrase “arising out of” employment requires some causal connection between the injury and the employment.⁶ The existence, nature and extent of the disability of an injured workman is a question of fact.⁷ A workers compensation claimant’s testimony alone is sufficient evidence of the claimant’s physical condition.⁸

The ALJ analyzed the evidence in the following fashion:

Claimant is morbidly obese, weighing in excess of 300 pounds, according to the medical exhibits admitted at Preliminary Hearing. In the winter of 2007 or 2008, Claimant slipped and fell on her porch at home, due to icy conditions, and suffered injuries to her knee that required that she miss a week of work. Claimant did not report that fall to Dr. Brown, or to the court in her testimony at Preliminary Hearing.

In the court’s view, Claimant’s failure to report to Dr. Brown a slip and fall that aggravated her knee pain and caused her to miss a week from work, severely undermines his findings and conclusions. Further, to the extent that Claimant’s history of being on her feet “at all times” is inaccurate, Dr. Brown’s opinions and conclusion are again undermined. Finally, it would be expected and foreseeable that a morbidly obese person would have knee and back pain, due to the additional stresses caused by excessive weight. That would be particularly true where a non-work-related fall and injury aggravate a pre-existing knee condition, and the injured knee has to then carry excessive weight. Knee and back pain attributable to excessive weight and advancing age are products of the “natural aging process,” and are not “personal injuries” within the meaning of the Kansas Workers Compensation Act. K.S.A. 44-508(e).

This Board member disagrees. Ms. Streit testified regarding the alleged fall claimant suffered at home but further testified that a doctor’s off work slip was not required for claimant to return to work. And it is significant that claimant did return to work performing her regular job duties. There are no medical records in this evidentiary record to support the conclusion that this alleged fall at home aggravated her knee injury. Likewise, this evidentiary record does not contain any medical evidence to support a conclusion that it would be expected that a morbidly obese person, in particular the claimant, would be expected to have knee and back pain due to her weight.

⁵ K.S.A. 2009 Supp. 44-501(a).

⁶ *Pinkston v. Rice Motor Co.*, 180 Kan. 295, 303 P.2d 197 (1956).

⁷ *Armstrong v. City of Wichita*, 21 Kan. App. 2d 750, 907 P.2d 923 (1995).

⁸ *Hanson v. Logan U.S.D.* 326, 28 Kan. App. 2d 92, 11 P.3d 1184 (2000), *rev. denied* 270 Kan. 898 (2001).

The claimant testified that standing at work and performing her duties, which at times included lifting patients and restraining combative patients caused her back and bilateral leg pain. While she did not stand during her entire work shifts, nonetheless, it is undisputed that at times she was required to perform physical work activities while standing. Claimant complained about her condition and attempted to return to Dr. Hildebrand in the summer of 2009 but such treatment was denied. And she testified that toward the end of her employment with respondent her standing at work had increased. Although Dr. Brown's report does state claimant was constantly standing, that is not the sole cause for her complaints as Dr. Brown noted it was the work activities, i.e., bending, lifting and restraining combative patients that contributed to her complaints.

This Board Member finds, based upon the evidentiary record compiled to date, that claimant has met her burden of proof that she suffered repetitive accidental injuries arising out of and in the course of her employment through her last day worked on October 28, 2009.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.⁹ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2009 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.¹⁰

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Bruce E. Moore dated February 18, 2010, is reversed.

IT IS SO ORDERED.

Dated this 30th day of April 2010.

HONORABLE DAVID A. SHUFELT
BOARD MEMBER

c: John L. Carmichael, Attorney for Claimant
Richard L. Friedeman, Attorney for Respondent and State Self-Insurance Fund
Bruce E. Moore, Administrative Law Judge

⁹ K.S.A. 44-534a.

¹⁰ K.S.A. 2009 Supp. 44-555c(k).